IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

S. B. CIVIL MISCELLANEOUS APPEAL NO.242/93
(Khyali Lal & Another v. Isamiya & Others.)

Against the Judgment dated 26-12-1992
passed by Shri O.P.Gupta, RHJS, Judge,
Motor Accidents Claims Tribunal, Udaipur
in Claim Case No. 3/89

DATE OF JUDGMENT :::: NOVEMBER 01, 2007

P R E S E N T

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Deelip Kawadia, for Appellants.
Mr.A.K.Rajvanshi, for respondent/claimants.
Mr.V.K.Vyas, for Respondent – Insurance Co.

BY THE COURT:-

Aggrieved by the judgment dated 26.12.1992 passed by the Judge, Motor Accidents Claims Tribunal, Udaipur in Claim Case No.3/89, the claimants – appellants have preferred this appeal.

A claim petition was filed by the claimants contending that due to rash and negligent driving of the truck driver of Truck No.7435, Car

No. GBQ 966 was dashed, resulting in death of car driver Kalu Miya. The dependents of Kalu Miya maintained claim petition, claiming Rs.3,94,000/-. However, the Tribunal awarded a sum of Rs.2,15,000/- and interest at the rate of 12% in favour of the claimants, but out of the total claim allowed in favour of the claimants, liability of the insurance company was maintained to the extent of Rs.1,50,000/- and remaining liability was fastened on the owner of the truck and others.

Assailing the judgment of the Tribunal, the learned counsel for the appellants pressed only one issue which is pertaining to the liability of the insurance company. It was urged that the original policy was not produced by the insurance, thus the Tribunal should have taken adverse inference and otherwise, insurance company having charged Rs.240/- towards premium, thus, it was liable to pay the entire sum of compensation awarded by the Tribunal, in view of Section 2 of the Policy. Referring to the conditions of the Policy, it was submitted that the insurance company had agreed to indemnify entire liability of the insured in case of death or bodily injury of third person. According to him, the Tribunal has failed to notice the terms and conditions of the Policy, rather without discussing the matter in regard to the liability of the insurance company, simply a direction was issued to limit liability of the insurance company to the extent of Rs.1,50,000/-, though considering the same issue, this High Court has

taken a view that if the insurance company has agreed to indemnify all the liabilities of insured, then insurance company cannot take a plea that their liability is provided to the extent it is provided in the Statute.

Learned counsel has relied on the judgments given by the Rajasthan High Court in National Insurance Co. Ltd. v. Hastimal Locha & others (MACD 2006 (2) (Raj.) 1123), National Insurance Company Ltd. v. Laxmi & Others [2005 R.A.R. 3 (Raj.)], Deepali Brahma & Another v. Darshan Singh & Others [MACD 2006 (2) (Raj.) 1001] and Santra Devi (Smt.) & Others v. Firm Hari Singh Pratap Singh & Others [MACD 2006 (1) (Raj.) 14], wherein it was held that if the premium charged is for the "Act only Policy", then the liability of Insurance Company can be limited, but, in case where the premium charged from the vehicle owner was Rs.240/- which was captioned "liability to public risk act only" which under the cover is a grown considered as "third party risk policy" by charging premium higher than the "Act only policy", then on charging extra premium, Insurance Company was liable for entire claim. The Court has considered various judgments of the Hon'ble Apex Court as well as of this Court and taking note of the fact that if Insurance Company has agreed to undertake unlimited liability to indemnify the insured towards third party, then plea for limited liability would not be available to the Insurance Company. The Apex Court clarified that merely charging additional premium ipso facto may not make Insurance Company liable

for unlimited liability, but, in those cases, where agreement is executed by the parties who agreed for unlimited liability, then the liability between these parties would governed by the terms and conditions of the Policy. In this regard, judgments of the Apex Court as well as a judgment of the Division Bench of this Court would be relevant to be discussed.

The Hon'ble Apex Court considered the same issue as is involved in the present matter while deciding the matter in the case of New India Insurance Company & Others v. C.M.Jaya and Others (Supra). The Hon'ble Apex Court had considered various judgments rendered in different cases on the same issue, thus summarizing other judgments, the Hon'ble Apex Court held as under :-

> "12. In these appeals presently before us, the judgment and order of Delhi High Court are under challenge. The deceased was riding the pillion seat of a two wheeler when it met with accident with a truck insured by the appellant. On the claimants approaching the Claims Tribunal, it awarded a sum of Rs.1,03,360 as compensation and held that the liability of the appellant was limited to Rs.50,000 and the balance amount was recoverable from the driver and owner of the truck jointly and severally. The truck owner (the respondent No.4) preferred an appeal to the High Court. The High Court held that the liability of the appellant was unlimited as the vehicle was comprehensively insured. The High

Court also allowed the cross-objections preferred by the claimants-respondent Nos. 1 to 3 solely against the appellant under Order 41, rule 22, Civil Procedure Code for the full pecuniary liability to be placed upon the insurer while enhancing the amount of compensation from Rs.1,03,360 to Rs.3,60,000 with interest at the rate of 15 per cent per annum from the date of application. Hence, these two appeals are brought by the appellant, aggrieved by the judgment and order of the High Court. Submissions were made before us by the learned counsel for the parties in support of the respective contentions citing the decisions aforementioned as to the extent of liability of the appellant to pay the amount of compensation to the respondents Nos. 1 to 3.

It is not in dispute from the admitted copy of the insurance policy produced before the court that the liability of the appellant is limited to Rs.50,000 in regard to the claim in question. The relevant clause in the policy relating to limits of liability reads :

Limits of Liability : Limit of the amount of company's liability under Section II (1) (i) in respect of any one accident – Rs.50,000

Limit of the amount of the company's liability under Section II (1) (ii) in respect of any claim or series of claims arising out of one event – Rs.50,000

It is also not the case that any additional or higher

premium was paid to cover unlimited or higher liability than the statutory liability fixed as found in the term of the policy extracted above. In the light of the law stated above, it necessarily follows that the liability of the appellant is limited to Rs.50,000, as was rightly held by the Tribunal. The High Court committed an error in taking the contrary view that the liability of the appellant was unlimited merely on the ground that the insurance had taken a comprehensive policy. In Shanti Bai's case, 1995 ACJ 470 (SC), this court has clearly expressed the opinion that a comprehensive policy issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to third party risk for an amount higher than the statutory limit in the absence of specific agreement and payment of separate premium to cover third party risk for an amount higher than the statutory limit. This position is accepted in Amrit Lal Sood's case, 1998 ACJ 531 (SC), as well though no reference is made to this case. As already stated above, in Amrit Lal Sood's case, the court found an express term in the policy for covering wider risk and to meet the higher liability unlike in the case of Shanti Bai. Therefore, the High Court was not right in holding that the liability of the appellant insurance company was unlimited merely on the ground that the vehicle in question,i.e., the truck, was covered by a comprehensive insurance policy.

13. In the circumstances, we hold that the liability of the appellant insurance company is limited

> to Rs.50,000, as held by the Tribunal. In the view we have taken, it is unnecessary to go into the question relating to either maintainability of cross-objections before the High Court against the appellant alone or as to the enhancement of compensation when the owner and driver have not filed appeal against the impugned judgment."

The Hon'ble Apex Court had also considered its earlier judgment rendered in the case of Amrit Lal Sood v. Kaushalya Devi Thapar (1998 ACJ 531). It was held thus :-

> "4. The facts of the case were that on 25.8.1970, the Fiat car owned by the appellant No.2, collided with a goods carrier. The car was being driven by the appellant No.1, a brother of the appellant No.2. The car was insured with the respondent No.5. One Kishan Sarup Thapar, travelling in the car, got injured and was hospitalized for some time. He made claim for Rs.1,25,000 as compensation before the Motor Accidents Claims Tribunal. The Tribunal awarded Rs.15,800 as compensation. The claimant filed an appeal before the High Court for enhancement of compensation. The insurer (respondent No.5) filed appeal disputing its liability to satisfy the claim. In claimant's appeal compensation was enhanced to Rs.20,800. In the appeal filed by the insurance company the learned Judge held

that the claimant was a gratuitous passenger travelling in the car and, therefore, the insurance company was not liable. Two Letters Patent Appeals were filed – one by the legal representatives of the claimant and another by the driver of the vehicle. The appeal filed by the driver was dismissed and in the appeal filed by the legal representatives of the claimants compensation was increased to Rs.56,000 by the Division Bench of the High Court. The driver and owner of the car filed appeals in this Court. The question that came up for decision before this Court was whether the insurer was liable to satisfy the claim for compensation made by a person travelling gratuitously in the car. In deciding this question the court took the view that the liability of the insurer in the case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death of or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not, however, require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does

not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.

The relevant clauses of the policy are reproduced in para 6 of the said judgment. Clause 1 (a) under Section II relating to liability of third party reads :

"(1) The company will indemnify the insured in the event of accident caused by or arising our of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of -

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of an in the course of the employment of such person by the insured."

Looking to this clause the Court in para 8 has

held:

"Thus under Section II (1) (a)of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to 'any person'. The expression 'any person' would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirement of Section 95 of the Act. In so far as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous."

In the case of National Insurance Co. Ltd. v. Keshan Bahadur and Others (Supra), the Hon'ble Apex Court held thus -

"In case of insurer-appellant not taking any higher liability by accepting higher premium, the liability is neither unlimited nor higher than the statutory liability fixed under

> Section 95 (2) of the Act. Even if a vehicle is the subject matter of comprehensive insurance and a higher premium is paid on that score, limits of the liability with regard to third party risk does not become unlimited or higher beyond the statutory liability fixed. For this purpose, a specific agreement has to be arrived at between the insured and the insurer and separate premium has to be paid in respect of additional amount of liability undertaken by the insurer in that regard. This position was highlighted by this Court in **National Insurance Co. Ltd. v. Jugal Kishore (JT 1988 (1) SC 265).** In **New India Assurance Co. Ltd. v. C.M.Jaya and Others (JT 2002 (1) SC 198)**, a constitution bench approved the view taken in **Shanti Bai** (supra) and **Jugal Kishore** (supra). It was held that in case of insurer not taking any higher liability by accepting higher premium for payment of compensation to third party, the insurer would be liable to the extent limited under Section 95 (2) of the Act and would not be liable to pay the entire amount of compensation awarded."

The Division Bench, in the case of National Insurance Co. Ltd. v. Laxmi & Others (Supra) considered judgments rendered by the Apex Court in the case of National Insurance Co. Ltd. v. Keshav Bahadur & Others (Supra) and, thereafter, it was held :-

"22. This brings to the facts of the present case. There is no dispute about the finding that the premium charged by the Insurance Company was in excess of "Act only Policy" and was under Heading B "liability to public risk", which was indicated at Rs.240/- alongwith other premium with which we were not concerned presently. The terms of policy which defined the liability to third parties at page two of the footing is vitally different than what was before the Supreme Court in Keshav Bahadur's case (supra). On the
principal clause, the terms of liability may be quoted below :

1. Subject to the limit of liability the **Company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of**

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the Motor Vehicle.

PROVIDED ALWAYS that :

(a) The Company shall not be liable in

respect of death injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or the taxing away of the load from the Motor Vehicle after unloading therefrom.

(b) Except so far as is necessary to meet the requirement of Section 92/A and 95 of the Motor Vehicles Act, 1939, the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of an in the course of such employment.

(c) Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the Company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the even tout of which any claim arises.

(d) The Company shall not be liable in respect of damage to property belonging to or held in trust by or in the custody or control of

the insured or a member of the insured's household or being conveyed by the Motor Vehicle.

(e) The Company shall not be liable in respect of damage to any bridge and/or weigh-bridge and/or viaduct and/or to anything beneath by vibration or by the weight of the Motor Vehicle and/or load carried by the Motor Vehicle.

(f) The Company shall not be liable in respect of damage to property caused by sparks or ashes from the Motor Vehicle or caused by or arising out of the explosion of the boiler of the Motor Vehicle.

(g) The Company shall not be liable in respect of death or bodily injury caused by or arising out of the explosion of the boiler of the Motor Vehicle unless such death or injury is caused by or arises out of the use of the Motor Vehicle in public place in India within the meaning of Motor Vehicles Act, 1939."

23. A perusal of the aforesaid terms show that under principal clause, the Insurance Company accepted its liability towards third party injuries co-extensive with legal liability of the owner of vehicle. By providing various clauses under provisos it limited its liability to Act only liability in

respect of matters covered by one or other of the provisos. Under none of the provisos limit of liability towards bodily injury or death caused to a third party has been restricted to statutory liability though liability to indemnify passengers has been limited to statutory liability. So also liability towards employees has been also limited to the extent provided under the Workmen's Compensation Act.

24. No exception has been made to restricting liability undertaken by the Insurance Company to the extent the insured will become legally liable to pay in respect of death or bodily injury to third party caused by or arising out of use. Therefore, in our opinion, under policy the appellants specifically undertook unlimited liability to indemnify the insured towards the thirty party by not excluding the liability of the insured in respect of claims arising out of death or bodily injury caused to the third party. Therefore, the Motor Accident Claims Tribunal as well as the learned Single Judge were right in their conclusion. The liability of the Insurance Company on demand of additional premium was unlimited towards third party under the terms of the policy."

Considering the facts of the case, I find that Policy issued by the Insurance Company does not limit its liability towards third party other than provided in proviso (a) to (g) to Section II of the Insurance Policy. The terms and conditions of the Policy, as exist in Section II, are quoted herein for ready reference :-

"**SECTION II- LIABILITIES TO THIRD PARTIES**

1. Subject to the limit of liability the Company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the Motor Vehicle.

PROVIDED ALWAYS that :

(a) The Company shall not be liable in respect of death injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or the taxing away of the load from the Motor Vehicle after unloading therefrom.

(b) Except so far as is necessary to meet the requirement of Section 92A and 95 of the Motor Vehicles Act, 1939, the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of an in the course of such employment.

(c) Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the Company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the even tout of which any claim arises.

(d) The Company shall not be liable in respect of damage to property belonging to or held in trust by or in the custody or control of the insured or a member of the insured's household or being conveyed by the Motor Vehicle.

(e) The Company shall not be liable in respect of damage to any bridge and/or weigh-bridge and/or viaduct and/or to

anything beneath by vibration or by the weight of the Motor Vehicle and/or load carried by the Motor Vehicle.

(f) The Company shall not be liable in respect of damage to property caused by sparks or ashes from the Motor Vehicle or caused by or arising out of the explosion of the boiler of the Motor Vehicle.

(g) The Company shall not be liable in respect of death or bodily injury caused by or arising out of the explosion of the boiler of the Motor Vehicle unless such death or injury is caused by or arises out of the use of the Motor Vehicle in public place in India within the meaning of Motor Vehicles Act, 1939."

Perusal of the terms and conditions reveals that the Insurance Company had agreed to indemnify the insured against all sums, including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death or bodily injury to any person caused by or arising out of use of motor vehicle and in the proviso to those agreement, there exits no provision to the effect that the liability of the Company would be limited to the extent of Rs.1,50,000/- or as is provided under the Act of 1939 other than for the category of the liability in Workmen's Compensation Act, 1923 and regarding loading and unloading. Therefore, the argument of the non-

appellant Insurance Company cannot be accepted to say that despite express agreement entered into between the parties, liability of the Insurance Company would yet be limited to the provisions of Section 95 (2) of the Act of 1939.

Learned counsel for the appellant has given reference of judgments rendered by this Court in the cases of National Insurance Co. Ltd. v. Hastimal Locha & others (MACD 2006 (2) (Raj.) 1123), National Insurance Company Ltd. v. Laxmi & Others [2005 R.A.R. 3 (Raj.)], Deepali Brahma & Another v. Darshan Singh & Others [MACD 2006 (2) (Raj.)1001] and Santra Devi (Smt.) & Others v. Firm Hari Singh Pratap Singh & Others [MACD 2006 (1) (Raj.) 14], wherein also, it was held that where extra premium has been charged by the Insurance Company, then their liability is co-extensive to the liability of the insured in the cases where parties to the agreement have agreed for such terms and conditions, wherein the Insurance Company has agreed to indemnify claimant's costs and expenses towards death or bodily injury to third person. It is not a case of the nature decided by the Apex Court, wherein there was a specific term in the Policy to the effect that the liability of the Insurance Company would be limited to the extent provided in terms and conditions of Policy, therefore, the facts in the case of National Insurance Policy v. Keshav Bahadur and Others as well as in the case of New India Insurance Company & Others v. C. M. Jaya, were different as the

terms of the Policy considered by the Hon'ble Apex Court were different than the terms and Policy exist in the present matter. Even while deciding the aforesaid cases, the Hon'ble Apex Court categorically made distinction between different type of policy by holding that unless a specific agreement is arrived at between the insured and insurer and separate premium has been made, the liability of Insurance Company would be limited. The outcome of the aforesaid decision is that mere payment of extra premium would not cover the liability of insurer beyond the statutory provisions. However, in case of specific agreement with extra payment of premium, the liability of the Insurance Company can be extended beyond the provisions of the Act of 1939. The Division Bench of this High Court has considered all the judgments of the Apex Court while arrived at the conclusion that if the conditions of the policy permit liability of the Insurance Company beyond the statutory provisions, then the Insurance Company cannot take a plea regarding limited liability or if such plea is taken, then it cannot be accepted. The policy in the present matter is containing the same terms and conditions as were existing in the case of National Insurance Company Limited v. Laxmi & Others (Supra). Thus, in view of the fact the finding of the learned Tribunal to limit liability of the Insurance Company to the extent of Rs.1,50,000/- cannot be accepted, more so, when the judgment of the Tribunal does not specify the reasons while limiting such liability.

In view of the discussion made above, the appeal preferred by the appellant is allowed while modifying the judgment of the Tribunal to the effect that the liability of the Insurance Company would not be limited to the extent of Rs.1,50,000/-. Therefore, the outcome of the judgment is that the liability of the Insurance Company would be co-extensive to the liability of the insured. The judgment of the Tribunal is modified to the extent indicated above and thereby, the Insurance Company is held liable for the entire liability fixed for entire compensation awarded by the Tribunal.

The appeal is, accordingly, allowed, with no order as to costs.

(MUNISHWAR NATH BHANDARI), J.

scd.